

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

Bennie Ray Brown,)	
Petitioner,)	CV F 05-0153 OWW WMW HC
)	
v.)	FINDINGS AND
)	RECOMMENDATION RE
)	DISMISSAL OF ACTION FOR
)	FAILURE TO PROSECUTE
People of the State of)	
California,)	
Respondent.)	
)	
)	
)	

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a habeas corpus action pursuant to 28 U.S.C. section 2254.

On August 12, 2005, the court issued an order granting a motion for an extension of time and served the order on Petitioner. On August 24, 2005, the order served on Petitioner was returned by the U.S. Postal Service as undeliverable.

Pursuant to Local Rule 83-183(b), a party appearing in propria persona is required to keep the court apprised of his or her current address at all times. Local Rule 83-183(b) provides,

1 in pertinent part:

2
3 If mail directed to a plaintiff in propria
4 persona by the Clerk is returned by the U.S.
5 Postal Service, and if such plaintiff fails
6 to notify the Court and opposing parties
7 within sixty (60) days thereafter of a
8 current address, the Court may dismiss the
9 action without prejudice for failure to
10 prosecute.

11 In the instant case, sixty days have passed since Petitioner's
12 mail was returned and he has not notified the court of a current
13 address.

14 In determining whether to dismiss an action for lack of
15 prosecution, the court must consider several factors: (1) the
16 public's interest in expeditious resolution of litigation; (2)
17 the court's need to manage its docket; (3) the risk of prejudice
18 to the defendants; (4) the public policy favoring disposition of
19 cases on their merits; and (5) the availability of less drastic
20 sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
21 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988). The court
22 finds that the public's interest in expeditiously resolving this
23 litigation and the court's interest in managing the docket weigh
24 in favor of dismissal, as this case has been pending since
25 November of 2004. The court cannot hold this case in abeyance
26 indefinitely based on Petitioner's failure to notify the court of
27

1 his address. The third factor, risk of prejudice to defendants,
2 also weighs in favor of dismissal, since a presumption of injury
3 arises from the occurrence of unreasonable delay in prosecuting
4 an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.
5 1976). The fourth factor -- public policy favoring disposition
6 of cases on their merits -- is greatly outweighed by the factors
7 in favor of dismissal discussed herein. Finally, given the
8 court's inability to communicate with Petitioner based on
9 Petitioner's failure to keep the court apprised of his current
10 address, no lesser sanction is feasible.

11 Accordingly, the court HEREBY RECOMMENDS that this
12 action be dismissed for Petitioner's failure to prosecute.

13 These findings and recommendations are submitted to the
14 United States District Judge assigned to the case, pursuant to
15 the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty
16 days after being served with these findings and recommendations,
17 any party may file written objections with the court and serve a
18 copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations."
20 Any reply to the objections shall be served and filed within ten
21 days after service of the objections. The parties are advised
22 that failure to file objections within the specified time may
23 waive the right to appeal the District Court's order. Martinez
24 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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26 IT IS SO ORDERED.
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Dated: March 10, 2006
mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE